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File No.: 123424

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

Antonio Martinelli,

Plaintiff,

v.

Hearst Newspapers, LLC,

Defendant.

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Case No:

Plaintiff Antonio Martinelli ("*Plaintiff*"), by and through its undersigned counsel, for its Complaint against defendant Hearst Newspapers, LLC ("*Defendant*") states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement.
2. Plaintiff herein creates photographic images and owns the rights to these photographs which Plaintiff licenses for various uses including online and print publications.
3. Defendant owns and operates a website known as www.chron.com (the "*Website*").
4. Defendant, without permission or authorization from Plaintiff actively copied, stored, and/or displayed Plaintiff's photographs on the Website and engaged in this misconduct

1 knowingly and in violation of the United States copyright laws.

2 **PARTIES**

3 5. Plaintiff Antonio Martinelli is an individual who is a citizen of France and
4 maintains a principal place of business at 22 Rue Ernest Cresson, Paris 75014 in France.

5 6. Upon information and belief, Defendant Hearst Newspapers, LLC, is a Delaware
6 limited liability company with a principal place of business at 3540 Toringdon Way, Charlotte
7 in Mecklenburg County, North Carolina and is liable and responsible to Plaintiff based on the
8 facts herein alleged.

9 **JURISDICTION AND VENUE**

10 7. This Court has subject matter jurisdiction over the federal copyright
11 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

12 8. This Court has personal jurisdiction over Hearst Newspapers, LLC because it
13 resides in Texas.

14 9. Venue is proper under 28 U.S.C. §1391(a)(2) because Hearst Newspapers, LLC
15 does business in this Judicial District and/or because a substantial part of the events or
16 omissions giving rise to the claim occurred in this Judicial District.

17 **FACTS COMMON TO ALL CLAIMS**

18 10. Plaintiff is a professional photographer by trade who is the legal and rightful
19 owners of photographs which it licenses to online and print publications.

20 11. Plaintiff has invested significant time and money in building Plaintiff's
21 photograph portfolio.

22 12. Plaintiff has obtained active and valid copyright registrations from the United
23 States Copyright Office (the "USCO") which cover many of Plaintiff's photographs while many
24 others are the subject of pending copyright applications.

25 13. Plaintiff's photographs are original, creative works in which Plaintiff owns
26 protectable copyright interests.

27 14. Hearst Newspapers, LLC is the registered owner of the Website and is
28

1 responsible for its content.

2 15. Hearst Newspapers, LLC is the operator of the Website and is responsible for its
3 content.

4 16. The Website is a popular and lucrative commercial enterprise.

5 17. The Website is monetized in that it contains paid advertisements and, upon
6 information and belief, Defendant profits from these activities.

7 18. On January 20, 2016, Plaintiff Antonio Martinelli authored several photographs
8 of the interior and surrounding land of the “Guinness Castle” in Ireland (collectively
9 “*Photographs*”). Copies of the photographs are attached hereto collectively as Exhibit 1
10 (“*Exhibit 1-Photograph #1-6*”).

11 19. Plaintiff applied to the USCO to register Photograph 1, 2, and 3 on or about
12 October 7, 2019 under Application No. 1-8136271181.

13 20. Photograph 1, 2, and 3 were registered by the USCO on October 7, 2019 under
14 Registration No. VA 2-173-451.

15 21. Plaintiff applied to the USCO to register Photograph 4, 5, and 7 on or about
16 March 27, 2020 under Application No. 1-8681326117.

17 22. Photograph 4, 5, and 7 were registered by the USCO on March 27, 2020 under
18 Registration No. VA 2-201-334.

19 23. Plaintiff applied to the USCO to register Photograph 6 on or about August 28,
20 2020 under Application No. 1-9176755033.

21 24. Photograph 6 was registered by the USCO on August 28, 2020 under
22 Registration No. VA 2-215-991.

23 25. On November 17, 2018, Plaintiff observed the Photographs on the Website in a
24 story dated March 7, 2017. Copies of the screengrabs of the Website including the Photographs
25 are attached hereto collectively as Exhibit 2.

26 26. The Photographs were displayed at URL:
27 <https://www.chron.com/homes/article/The-Guinness-Castle-in-Ireland-is-on-the-market->
28

10983216.php.

27. Photograph 1 was stored at URL:
https://s.hdnux.com/photos/57/54/76/12505020/3/ratio3x2_850.jpg.

28. Photograph 2 was stored at URL:
https://s.hdnux.com/photos/57/54/76/12505021/3/ratio3x2_850.jpg.

29. Photograph 3 was stored at URL:
https://s.hdnux.com/photos/57/54/77/12505030/3/ratio3x2_850.jpg.

30. Photograph 4 was stored at URL:
<https://s.hdnux.com/photos/57/54/77/12505026/3/850x0.jpg>.

31. Photograph 5 was stored at URL:
https://s.hdnux.com/photos/57/54/76/12505001/3/ratio3x2_850.jpg.

32. Photograph 6 was stored at URL:
<https://s.hdnux.com/photos/57/54/77/12505029/3/850x0.jpg>.

33. Photograph 7 was stored at URL:
https://s.hdnux.com/photos/57/54/76/12505023/3/ratio3x2_850.jpg.

34. Without permission or authorization from Plaintiff, Defendant volitionally selected, copied, stored and displayed each of Plaintiff copyright protected Photographs as are set forth in Exhibit “1” on the Website.

35. Upon information and belief, the Photographs were copied, stored and displayed no less than six (6) times without license or permission, thereby infringing on Plaintiff’s copyrights (hereinafter singularly the “*Infringement*” and collectively the “*Infringements*”).

36. Each Infringement includes a URL (“*Uniform Resource Locator*”) for a fixed tangible medium of expression that was sufficiently permanent or stable to permit it to be communicated for a period of more than a transitory duration and therefore constitutes a specific infringement. *17 U.S.C. §106(5); Perfect 10, Inc. v. Amazon.com, Inc.* 508 F.3d 1146, 1160 (9th Cir. 2007).

37. Each Infringement is an exact copy of the entirety of Plaintiff’s original image

1 that was directly copied and stored by Defendant on the Website.

2 38. Upon information and belief, Defendant takes an active and pervasive role in the
3 content posted on its Website, including, but not limited to copying, posting, selecting,
4 commenting on and/or displaying images including but not limited to Plaintiff's Photographs.

5 39. Upon information and belief, Defendant directly contributes to the content
6 posted on the Website by, inter alia, directly employing reporters, authors and editors as its
7 agents, including but not limited to Darla Guillen whose Website lists her as a "Digital
8 Reporter" ("Employees").

9 40. Upon information and belief, at all material times the Employees were acting
10 within the course and scope of their employment when they posted the Infringements.

11 41. Upon information and belief, at all material times the Employees were acting
12 within the course and scope of their agency when they posted the Infringements.

13 42. Upon information and belief, the Photographs were willfully and volitionally
14 posted to the Website by Defendant.

15 43. Upon information and belief, the Infringements were not posted at the direction
16 of a "user" as that term is defined in 17 U.S.C. §512(c).

17 44. Upon information and belief, Defendant engaged in the Infringements
18 knowingly and in violation of applicable United States Copyright Laws.

19 45. Upon information and belief, Defendant had complete control over and actively
20 reviewed and monitored the content posted on the Website.

21 46. Upon information and belief, Defendant has the legal right and ability to control
22 and limit the infringing activities on its Website and exercised and/or had the right and ability
23 to exercise such right.

24 47. Upon information and belief, Defendant monitors the content on its Website.

25 48. Upon information and belief, Defendant has received a financial benefit directly
26 attributable to the Infringements.

27 49. Upon information and belief, the Infringements increased traffic to the Website
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and, in turn, caused Defendant to realize an increase in its advertising revenues.

50. Upon information and belief, a large number of people have viewed the unlawful copies of the Photographs on the Website.

51. Upon information and belief, Defendant at all times had the ability to stop the reproduction and display of Plaintiff's copyrighted material.

52. Defendant's use of the Photographs, if widespread, would harm Plaintiff's potential market for the Photographs.

53. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.

FIRST COUNT

(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)

54. Plaintiff repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

55. The Photographs are original, creative works in which Plaintiff owns valid copyright properly registered with the United States Copyright Office.

56. Plaintiff has not licensed Defendant the right to use the Photographs in any manner, nor has Plaintiff assigned any of its exclusive rights in the Copyrights to Defendant.

57. Without permission or authorization from Plaintiff and in willful violation of Plaintiff's rights under 17 U.S.C. §106, Defendant improperly and illegally copied, stored, reproduced, distributed, adapted, and/or publicly displayed works copyrighted by Plaintiff thereby violating one of Plaintiff's exclusive rights in its copyrights.

58. Defendant's reproduction of the Photographs and display of the Photographs on the Website constitutes willful copyright infringement. *Feist Publications, Inc. v. Rural Telephone Service Co., Inc.*, 499 U.S. 340, 361 (1991).

59. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is entitled to an award of actual damages and disgorgement of all of Defendant's profits attributable to the infringements as provided by 17 U.S.C. § 504 in an amount to be proven.

60. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court

1 in its discretion may allow the recovery of full costs pursuant to 17 U.S.C. § 505 from
2 Defendant.

3 61. As a result of Defendant's violations of Title 17 of the U.S. Code, Plaintiff is
4 entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17
5 U.S.C. § 502.

6 **JURY DEMAND**

7 62. Plaintiff hereby demands a trial of this action by jury.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE** Plaintiff respectfully requests judgment as follows:

10 That the Court enters a judgment finding that Defendant has infringed on Plaintiff's
11 rights to the Photographs in violation of 17 U.S.C. §501 et seq. and award damages and
12 monetary relief as follows:

- 13 a. finding that Defendant infringed upon Plaintiff's copyright interest in the
14 Photograph by copying and displaying without a license or consent;
15 b. for an award of actual damages and disgorgement of all of Defendant's
16 profits attributable to the infringements as provided by 17 U.S.C. § 504
17 in an amount to be proven;
18 c. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from
19 any infringing use of any of Plaintiff's works;
20 d. for costs of litigation against Defendant pursuant to 17 U.S.C. § 505;
21 e. for pre judgment interest as permitted by law; and
22 f. for any other relief the Court deems just and proper.
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1 DATED: October 18, 2021

2 **SANDERS LAW GROUP**

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